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September 7, 2011

Senator Casperson

Via: E-mail
RE: HB 4298

Dear Senator Casperson:

Attorney Karen Ferguson and I represent Greg, Ellen and Steve Cole who own property on Crystal Lake in Benzie County. The access to this property is in part, along the old Ann Arbor Railroad corridor (now owned by the State of Michigan). The Cole property has been accessed using this 20-foot gravel road since 1963, and although there is no recorded easement, there was a written agreement between our clients' predecessor-in-title and the railroad company allowing the predecessors to use the 20-foot easement to access their land. In March of this year, we requested that MDOT and MDNRE recognize the Coles' right to continue to access their land using the same 20-foot easement over the former Ann Arbor Railroad right-of-way. A response from the State is still pending.

The Coles are in favor of a version of HB 4298 and strongly encourage the Senate to pass a similar bill. However, we would suggest that under section 2124, the language be changed to allow easements over natural areas, as many private lands are currently accessed via roads that travel over natural or wilderness areas. Additionally, there should be an exception in the law allowing for the State to recognize a legal but unrecorded easement such as when the predecessor-in-title of the State has a written agreement with an adjacent land-owner to use an access road. More flexibility in favor of private land-owners gaining access to their property is in keeping with the spirit of our property laws which encourage the beneficial use of land.

We look forward to a change in the law that makes it easier for property owners and the state to work together to recognize legitimate easement rights.

Sincerely,

Kristyn J. Houle